UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JULIE A. SU, Acting Secretary of Labor, United States Department of Labor,	:	
Plaintiff,	:	**COMPLAINT**
v.	:	
COHEN BROTHERS REALTY CORP.; CHARLES COHEN, individually; and STEVEN CHERNIAK, individually,	:	Civil Action No. 24-2000
Defendants.	:	

Plaintiff JULIE A. SU, Acting Secretary of Labor, United States Department of Labor (the "Acting Secretary"), by and through undersigned counsel, brings this action under sections 16(c) and 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* ("the Act" or "the FLSA"), alleging that Defendants violated sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Act, to recover back wages, liquidated damages, and to enjoin acts and practices which violate the provisions of the FLSA, and to obtain other appropriate relief.

Defendants, who operate a commercial real estate business in New York, New York, have willfully violated the FLSA by failing to pay certain employees employed as personal drivers the applicable overtime premiums for hours worked in excess of forty each week. Defendants further failed to keep accurate and/or complete time and pay records for those employees. From on or about October 5, 2019 through at least October 29, 2022 (the "relevant time period"), Defendants did not pay proper overtime to the employees who typically and regularly worked more than 40 hours per week and did not keep records of all hours worked by the employees and all wages paid to the employees.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to section 17 of the FLSA, 29 U.S.C. § 217, and 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in the United States District Court for the Southern District of New York because a substantial part of the events and/or omissions giving rise to the claims occurred in this district, specifically in Bellport, New York, 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

The Parties

3. Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department of Labor, is vested with authority to file suit to restrain violations of the FLSA and recover back wages and liquidated damages and is the proper plaintiff for this action.

4. Defendant Cohen Brothers Realty Corp. is a corporation organized under the laws of the state of New York, having its principal place of business at 750 Lexington Avenue, 29th Floor, New York, New York 10022, within the jurisdiction of this Court, where it was engaged in operating a commercial real estate business.

5. Defendant Cohen Brothers Realty Corp. has regulated the employment of all persons employed by it and acted directly and indirectly in the corporation's interests in relation to its employees and is thus an employer of its employees within the meaning of section 3(d) of the Act.

6. Defendant Charles Cohen is and was the Chief Executive Officer of Defendant Cohen Brothers Realty Corp.

7. Defendant Charles Cohen is and was in active control and management of Defendant Cohen Brothers Realty Corp.

8. Defendant Charles Cohen had the authority to hire and fire employees of Defendant Cohen Brothers Realty Corp.

9. Defendant Charles Cohen hired employees of Defendant Cohen Brothers Realty Corp.

10. Defendant Charles Cohen had the authority to supervise and control employee work schedules or conditions of employment of Defendant Cohen Brothers Realty Corp.

11. Defendant Charles Cohen supervised employees of Defendant Cohen Brothers Realty Corp.

12. Defendant Charles Cohen set the work schedules of employees of Defendant Cohen Brothers Realty Corp.

13. Defendant Charles Cohen had the authority to determine the pay rates and method of payment of employees of Defendant Cohen Brothers Realty Corp.

14. Defendant Charles Cohen set pay rates of employees of Defendant Cohen Brothers Realty Corp.

15. Defendant Charles Cohen had the authority to maintain employment records of Defendant Cohen Brothers Realty Corp.

16. Defendant Charles Cohen maintained employment records of Defendant Cohen Brothers Realty Corp.

17. Accordingly, Defendant Charles Cohen regulated the employment of all persons employed by him and is a person acting directly or indirectly in the interest of Defendant Cohen Brothers Realty Corp. in relation to the employees and is thus an employer within the meaning of section 3(d) of the Act.

18. Upon information and belief, Defendant Charles Cohen resides in the state of New York, within the jurisdiction of this Court.

19. Defendant Steven Cherniak is and was the Chief Operating Officer of Defendant Cohen Brothers Realty Corp.

20. Defendant Steven Cherniak is and was in active control and management of Defendant Cohen Brothers Realty Corp.

21. Defendant Steven Cherniak had the authority to hire and fire employees of Defendant Cohen Brothers Realty Corp.

22. Defendant Steven Cherniak hired employees of Defendant Cohen Brothers Realty Corp.

23. Defendant Steven Cherniak had the authority to supervise and control employee work schedules or conditions of employment of Defendant Cohen Brothers Realty Corp.

24. Defendant Steven Cherniak supervised employees of Defendant Cohen Brothers Realty Corp.

25. Defendant Steven Cherniak set the work schedules of employees of Defendant Cohen Brothers Realty Corp.

26. Defendant Steven Cherniak had the authority to determine the pay rates and method of payment of employees of Defendant Cohen Brothers Realty Corp.

27. Defendant Steven Cherniak set pay rates of employees of Defendant Cohen Brothers Realty Corp.

28. Defendant Steven Cherniak had the authority to maintain employment records of Defendant Cohen Brothers Realty Corp.

29. Defendant Steven Cherniak maintained employment records of Defendant Cohen Brothers Realty Corp.

30. Accordingly, Defendant Steven Cherniak regulated the employment of all persons employed by him and is a person acting directly or indirectly in the interest of Defendant Cohen Brothers Realty Corp. in relation to the employees and is thus an employer within the meaning of section 3(d) of the Act.

31. Upon information and belief, Defendant Steven Cherniak resides in the state of New York, within the jurisdiction of this Court.

Defendants Are an Enterprise Engaged in Commerce

32. The business activities of the Defendants, as described herein, are related and performed through unified operation or common control for a common business purpose and constitute an enterprise within the meaning of section 3(r) of the Act.

33. Defendants have employed and are employing employees as personal drivers, including those employees listed in Exhibit A, in the activities of an enterprise engaged in commerce or in the production of goods for commerce, including the employment of employees that handle, sell, or otherwise work on goods or materials that have been moved in or produced for commerce by any person, such as motor vehicles.

34. The enterprise has an annual gross volume of sales made or business done in an amount not less than $500,000 at all times relevant to this Complaint.

35. Therefore, the employees are employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1)(A) of the Act.

Defendants' Pay Practices

36. During the relevant time period, Defendants employed approximately six employees as personal drivers.

37. During the relevant time period, Defendants paid their non-exempt personal driver employees weekly salaries ranging from $1,250 to $1,654.

38. During the relevant time period, many of Defendants' personal driver employees typically worked between approximately 41 and 60 hours in a workweek.

Defendants Failed to Pay Proper Overtime

39. During the relevant period, Defendants did not pay their non-exempt personal driver employees the required premium of one and one-half times employees' regular rates for hours worked in excess of forty in a workweek.

40. For all workweeks, Defendants compensated their non-exempt personal driver employees at their flat weekly salary regardless of the amount of hours worked in excess of forty hours in a workweek.

41. As a result of the practices described herein, Defendants failed to compensate at least six former and current employees for work performed in workweeks longer than forty hours at a rate not less than one and one-half times the regular rate at which they were employed.

Defendants Failed to Keep Adequate and Complete Records

42. During the relevant time period, Defendants failed to make, keep and/or preserve adequate and accurate records, including their personal driver employees' actual total daily and weekly hours worked, and overtime hours worked, as prescribed by the regulations at 29 C.F.R. Part 516.

43. Defendants were required to make, keep, and preserve records of the persons employed by them, including, but not limited to, total hours worked each workday and workweek for a period of three years and make them available for inspection by the Department of Labor

upon request. Therefore, during the relevant time period, Defendants did not maintain accurate records of employees' hours worked as required.

Defendants' Actions Were Willful

44. Defendants were previously investigated by the U.S. Department of Labor, Wage and Hour Division ("Wage and Hour Division") in or about September 2019 for failure to pay proper overtime and failure to keep records of hours worked by their personal driver employees.

45. The prior Wage and Hour Division investigation revealed that Defendants failed to pay proper overtime to six non-exempt personal driver employees during the period from on or about July 17, 2017 through October 5, 2019.

46. Defendants agreed to pay $76,618.57 in unpaid overtime compensation to the six employees.

47. As a result of the prior Wage and Hour Division investigation, Defendants were aware in or about September 2019 that they were required to pay their personal driver employees overtime when they worked more than forty hours a week and to keep records of all hours worked by the employees.

48. Accordingly, Defendants' failure to pay overtime and failure to make, keep and/or preserve records of hours worked during the relevant time period was willful.

FIRST CAUSE OF ACTION

Violation of Sections 7(a) and 15(a)(2) of the FLSA, Failure to Pay Overtime

49. The Secretary incorporates by reference and realleges the allegations in paragraphs 1 through 48.

50. Defendants have willfully violated sections 7 and 15(a)(2) of the Act by employing at least six employees in an enterprise engaged in commerce or in the production of goods for commerce, for workweeks longer than forty hours, as prescribed in Section 7 of the Act, without

compensating the employees for their employment in excess of the prescribed hours at rates not less than one and one-half times the regular rates at which they were employed.

51. Accordingly, Defendants are liable for unpaid overtime compensation and an equal amount in liquidated damages pursuant to section 16(c) of the Act or, in the event liquidated damages are not awarded, unpaid overtime compensation and prejudgment interest on said unpaid overtime compensation under section 17 of the Act.

SECOND CAUSE OF ACTION

Violation of Sections 11(c) and 15(a)(5) of the FLSA, Recordkeeping

52. The Secretary incorporates by reference and realleges the allegations in paragraphs 1 through 51.

53. Defendants have willfully violated the provisions of sections 11(c) and 15(a)(5) of the Act, in that Defendants failed to make, keep, and/or preserve adequate and accurate records, including employees' actual daily and weekly hours worked, overtime hours worked, and total weekly wages paid, as prescribed by the regulations issued and found at 29 CFR Part 516.

RELIEF REQUESTED

WHEREFORE, cause having been shown, Plaintiff respectfully prays for judgment against Defendants providing the following relief:

(1) An injunction issued pursuant to section 17 of the Act permanently restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants, from violating the provisions of sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Act;

(2) An order pursuant to section 16(c) of the Act finding Defendants liable for unpaid overtime compensation found due Defendants' employees listed on the attached Exhibit A and an

equal amount of liquidated damages (additional overtime compensation and liquidated damages may be owed to certain employees presently unknown to Plaintiff for the period covered by this Complaint or to the present if violations are continuing); or;

(3) In the event liquidated damages are not awarded, for an injunction issued pursuant to section 17 of the Act restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants, from withholding the amount of unpaid overtime compensation found due Defendants' employees, and prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621;

(4) An order compelling Defendants to reimburse the Secretary for the costs of this action; and

(5) An order granting such other relief as the Court may deem necessary or appropriate.

DATED: March 18, 2024

New York, New York

SEEMA NANDA
Solicitor of Labor

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EXHIBIT A

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